

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

)	Administrative Cause
HYDRILLA PEST OR PATHOGEN)	Number 06-168E
)	(LSA Document 07-186(F))

**REPORT OF PUBLIC HEARING AND COMMENTS,
AND RECOMMENDATION FOR FINAL ADOPTION**

1. RULE PROCESSING

The Department, through its Division of Entomology and Plant Pathology, proposed this rule amendment to add 312 IAC 18-3-21 to regulate Hydrilla (*Hydrilla verticillata*), as a pest or pathogen.

The Natural Resources Commission (*NRC*) gave preliminary adoption to the rule package on November 14, 2006.

A “Notice of Intent” to adopt the proposed rule amendment was posted to the INDIANA REGISTER database website as 20070328-IR-312070186NIA on March 28, 2007. The notice identified Doug Keller, Aquatic Nuisance Species Coordinator of the Division of Fish and Wildlife, as the “small business regulatory coordinator” for purposes of Indiana Code § 4-22-2-28.1.

The proposed rule amendment was submitted to the Office of Management and Budget on March 30, 2007. In a letter dated May 1, 2007, Charles E. Schalliol, Deputy Director, Office of Management and Budget, recommended that the proposed rule amendments be approved.

The NRC Division of Hearings submitted the rule proposal to the Legislative Services Agency (*LSA*) along with the “Statement Concerning Rules Affecting Small Business” on

May 25, 2007 and was notified by LSA that the Intended Date of Publication was June 6, 2007. The Notice of Public Hearing, including the statement of requirements or costs to regulated entities required by Indiana Code § 4-22-2-24(d)(3), was submitted to LSA on May 31, 2006. The Notice of Public Hearing was posted to the INDIANA REGISTER database website as 20070606-IR-312070186PHA on June 6, 2007. Following receipt of an “Authorization to Proceed” from LSA on May 31, 2007, the NRC Division of Hearings also caused a Notice of Public Hearing to be published by the Indianapolis Newspapers, a newspaper of general circulation in Marion County Indiana on June 18, 2007.

In accordance with IC 4-22-2.1-5(c)(2), a copy of the proposed rule and the statement concerning rules affecting small business were submitted to the Indiana Economic Development Corporation (*IEDC*) on May 24, 2007. IEDC issued written comments on July 13, 2007 indicating no objection to the fiscal impacts of the addition of 312 IAC 18-3-20. The hearing officer responded to the comments of the IEDC on July 13, 2007. IEDC’s comments were made available for public inspection and copying in the office and on the NRC website on July 13, 2007 and copies were available for inspection during the public hearing conducted on July 23, 2007.

The public hearing was conducted as scheduled on July 23, 2007 at the Indiana Government Center South, Room W-272, 402 West Washington Street, Indianapolis, Indiana at 10:00 a.m. (EDT).

2. REPORT OF PUBLIC HEARING AND COMMENTS

a) Public Hearing Comments

No public comments were received with respect to the proposed rule during the public hearing.

b) Comments Received Outside Public Hearing

No public comments were received outside the public hearing.

3. RECOMMENDATION FOR FINAL ADOPTION

The proposed amendment will authorize the regulation of Hydrilla as a pest or pathogen, and prohibit the possession of the plant species or the transport of the species from one waterbody to another on aquatic equipment. The proposed rule requires a person owning an infected waterbody to take eradication measures and a person who discovers hydrilla in a waterbody to report the discovery. The proposed rule also authorizes the Department to regulate all infected waterbodies. All of these efforts are intended to prevent the spread of Hydrilla within Indiana beyond the single presently known infestation in Lake Manitou.

The eradication of Hydrilla is costly. Presently the Department estimates that \$500,000 will be spent annually for the first three years of treatment for Lake Manitou with the addition of residual funding for an additional three years thereafter to achieve full eradication. Based upon experiences with Lake Manitou eradication efforts are estimated to be \$2,700 per surface acre. In light of the costs associated with eradication efforts, the adoption of this rule, the intent of which is to prevent the need for future eradication efforts by eliminating the spread of Hydrilla, appears reasonable.

There were no public comments received with respect to the proposed rule and it is recommended that the Natural Resources Commission give final adoption to the rule package.

Dated: August 10, 2007

Sandra L. Jensen
Hearing Officer

“APPENDIX A”

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule
LSA Document #07-186(F)

DIGEST

Adds 312 IAC 18-3-21, under the article pertaining to entomology and plant pathology, to regulate Hydrilla (*Hydrilla verticillata*) as a pest or pathogen, to prohibit the possession of Hydrilla, including the transport of Hydrilla on aquatic equipment, and to give the Department of Natural Resources authority to regulate an infested body of water to prevent the movement of Hydrilla to other waters. Effective 30 days after filing with the Publisher.

312 IAC 18-3-21

SECTION 1. 312 IAC 18-3-21 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-21 Control of hydrilla (*Hydrilla verticillata*)

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 21. (a) Hydrilla (*Hydrilla verticillata*) is a pest or pathogen. This section:

- (1) governs the standards for the control of Hydrilla; and
- (2) applies to any part or life stage of Hydrilla.

(b) Except as provided in subsection (d), a person must not do the following:

- (1) Possess, sell, offer for sale, gift, barter, exchange, or distribute Hydrilla.
- (2) Allow Hydrilla to infest any:

- (A) lake;
- (B) river;
- (C) pond;
- (D) outdoor water garden;
- (E) waterway; or
- (F) aquarium.

(3) Transport Hydrilla on or within any:

- (A) boat;
- (B) trailer;
- (C) motor vehicle;
- (D) bait bucket;
- (E) fishing gear;
- (F) creel;
- (G) tackle;

- (H) tackle box; or
- (I) other aquatic appurtenance.

(c) A person who owns property that is infested with Hydrilla must take lawful efforts to eliminate the species.

(d) Exempted from this section are the following:

(1) A person who possesses Hydrilla under a permit issued by the state entomologist for:

- (A) scientific research;
- (B) a contained use; or
- (C) education.

(2) A person engaged in a project approved by the state entomologist for the destruction of Hydrilla.

(e) Any lake, river, or other waterway in which Hydrilla is located is regulated to prevent the dissemination of Hydrilla to other waterways.

(f) A person who discovers Hydrilla in a lake, river, or other waterway must report the discovery to a department fisheries biologist or at the following address:

Department of Natural Resources
Division of Fish and Wildlife
Aquatic Nuisance Species Coordinator
402 West Washington Street, Room W273
Indianapolis, IN 46204

(g) The report required under subsection (f) must include each of the following:

- (1) The location of the discovery, including the name of the county and the waterway.
- (2) The date of the discovery.
- (3) Contact information for the person making the report, including the telephone number and address.

(h) After preliminary review of a report submitted under subsection (g), the department may consult with an expert identifier for confirmation.

(i) The state entomologist or his or her designee may issue a compliance agreement to establish the means by which a person achieves compliance with this section.

(j) The state entomologist may issue a permit to a qualified applicant to engage in:

- (1) scientific research;
- (2) a contained use; or
- (3) education.

If appropriate to the purposes of this section, the state entomologist may issue an order to modify a permit issued under this subsection. (*Natural Resources Commission; 312 IAC 18-3-21*)

AGENDA ITEM #19